

COMPENSATORY LEAVE

OBJECTIVE

It is the Commonwealth's objective to provide eligible employees with paid leave as compensation for additional hours worked during specific times.

I. EMPLOYEES TO WHOM POLICY APPLIES

This policy applies to positions covered under the Virginia Personnel Act (Chapter 29, Code of Virginia) including full-time and part-time classified, and restricted employees. (See section II (A) of Policy 2.20, Types of Employment.)

II. DEFINITIONS

- A. Exempt employee**
An employee who is not subject to the overtime provisions of the Fair Labor Standards Act.
- B. Non-exempt employee**
An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

III. PURPOSE OF COMPENSATORY LEAVE

- A. Why compensatory leave**
Compensatory leave is paid time off for an eligible employee having worked additional hours in a workweek; having worked on an official office closing day, a holiday, or a scheduled day off; or when a holiday falls on an employee's scheduled day off.
- B. Use of compensatory leave**
Accrued compensatory leave may be used to provide paid time off from work for any purpose.
- C. Agency action on requests for use of compensatory leave**
When practicable, and for as long as the agency's operations are not affected adversely, an agency should attempt to approve an employee's request to use compensatory leave. The agency may also schedule use of compensatory leave at a time convenient to agency operations.

IV. ACCRUAL OF COMPENSATORY LEAVE

- A. Rate of accrual**
Eligible employees earn compensatory leave on an hour-for-hour basis. Accordingly, an employee may earn one hour of compensatory leave for each

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hour that he or she is required to work for the reasons cited in section III (A) above.

B. Duration of accrued compensatory leave

Accrued compensatory leave lapses within 12 months from the date it is earned. Thus, once lapsed, accrued compensatory leave may not be used or paid off upon an employee's change of status.

C. Exception to duration for certain positions as a retention incentive

An agency may extend indefinitely the time employees have to use earned compensatory leave when the employees hold positions that have been identified by the agency as critical to the agency's mission and for which the agency has significant difficulty retaining qualified employees (See Policy 3.05, Compensation).

1. When an employee is transferred, promoted or demoted to a position that does not have the same designation, the employee's compensatory leave balances that were extended will lapse 12 months from the date of status change, if they are not used before that date.
2. However, when an employee is transferred, promoted or demoted to a position that does not have the same designation, the agency may authorize payment for any compensatory balances that were extended but not used prior to the status change.

V. HOW COMPENSATORY LEAVE IS CREDITED FOR NON-EXEMPT EMPLOYEES

A. Eligibility to receive compensatory leave

A non-exempt employee is eligible to earn compensatory leave only when the hours worked in a workweek are 40 hours or less. If a non-exempt employee works more than 40 hours, the Overtime Leave policy (Policy 3.15) applies.

EXAMPLE:

A non-exempt employee who works ten hours on Monday, calls in sick on Tuesday, and works eight hours on Wednesday, Thursday, and Friday will receive two hours of compensatory leave for the extra hours worked on Monday, rather than overtime leave, because the employee did not actually work over 40 hours during the workweek.

B. Required by management

To earn compensatory leave, a non-exempt employee must be required by the agency head or his/her designee to work:

1. additional hours in a workweek in which the employee has taken a holiday or leave, but has worked no more than 40 hours;
2. on an official office closing day if he or she is designated as an "essential employee";
3. on a holiday; or
4. on a scheduled day off.

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NOTE: Non-exempt employees also will be credited with compensatory leave when a holiday falls on a scheduled rest day.

VI. HOW COMPENSATORY LEAVE IS CREDITED FOR EXEMPT EMPLOYEES

A. Exempt employee will receive compensatory leave

An exempt employee will earn compensatory leave when required by the agency head or his/her designee to work:

1. on an official office closing day if he or she is designated as an "essential employee"; or
2. on a holiday.

NOTE: Exempt employees will be credited with compensatory leave when a holiday falls on a scheduled rest day.

B. Other times for earning compensatory leave

An exempt employee may be awarded compensatory leave when the employee is required by the agency head or his/her designee to work more hours in a workweek than the agency head or his/her designee believes is reasonably expected for the accomplishment of the position's duties.

C. Meaning of "required to work"

1. The requirement to work additional hours must be specifically authorized by the agency head or his/her designee. General or blanket authorizations for an exempt employee to work beyond his or her regularly-scheduled hours shall not be the basis for earning compensatory leave.
2. Additional work hours are intended only to relieve specific peak workload needs and shall not be authorized to provide for continuous workload requirements.
3. Additional work hours do not include extra hours that an exempt employee independently determines is necessary to carry out his or her job responsibilities.

VII. COMPENSATORY LEAVE MUST BE AUTHORIZED

An employee must have agency approval before earning compensatory leave.

A. In writing

Compensatory leave must be authorized in writing by the agency head or his/her designee.

B. In advance

Compensatory leave should be authorized before the employee works the hours that result in compensatory leave. However, if emergency conditions exist which make it impossible to authorize compensatory leave before it is earned, written authorization should be prepared as soon as possible, thereafter.

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VIII. TREATMENT OF COMPENSATORY LEAVE UPON CHANGE OF STATUS

A. Payment of Compensatory Leave Balance

1. Full lump sum payment

An employee shall be paid in a lump sum for his or her accrued compensatory leave when the employee:

- a. leaves state service by resignation, retirement, layoff, termination, death; or
- b. is transferred, promoted, or demoted from one state agency to another.

2. Payment upon employee's death

Payment upon an employee's death shall be made to the Administrator or the Executor/Executrix. If there is no Administrator or Executor of the employee's estate, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with section 64.1-123 of the Code of Virginia. Payment may be held for 60 days.

B. Change of status

Balances will be retained when classified employees reduce work hours.

C. Payment optional when other changes in status

Agencies may allow employees to retain their accrued compensatory leave, or such leave may be paid in a lump sum when employees are:

1. placed on voluntary leave without pay (not layoff) for at least three months; or
2. transferred from a covered to a non-covered position.

D. Retention of accrued compensatory leave

When an employee is transferred, promoted or demoted to another classified position within the same agency, the employee will retain his or her accrued compensatory leave.

E. Impact of military leave on compensatory leave.

At the employee's option, all or part of compensatory leave balances may be:

- Applied to the period of absence due to military service;
- Paid up to the allowable payment limit at the time of placement on leave without pay; and/or
- Retained until reinstatement from military leave without pay.

Retained compensatory leave will be available for use for one year following reinstatement.

Note: At the employee's option, payment may be made in either: a) lump sum or b) payment on the regular payroll schedule.

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IX. AUTHORITY AND INTERPRETATION

This policy is issued by the Department of Human Resource Management pursuant to the authority provided in Title 2.2 of the Code of Virginia. This policy supersedes Rule 10.7, Compensatory Leave; Rule 10.11, Leave Without Pay, regarding retention of accrued leave during approved leave without pay; and Rule 10.13 (a) (b) and (e), Disposition of Leave Balances On Change of Status or Death), of the Rules for the Administration of the Virginia Personnel Act, effective July 1, 1977.

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with section 2.2-1201 of the Code of Virginia. Questions regarding the application of this policy should be directed to the Department of Human Resource Management's Office of Agency Human Resource Services. The Department of Human Resource Management reserves the right to revise or eliminate this policy as necessary.